RECORD AND BRIEFS

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No. 15-1248

In the Supreme Court of the United States

MCLANE COMPANY, INC., PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals was correct to review de novo the district court's decision concerning the enforceability of an administrative subpoena issued by the Equal Employment Opportunity Commission for certain employment records, when the enforceability decision turned on a question of law.

2. Whether the court of appeals correctly applied the standard of relevancy set forth in *EEOC* v. *Shell Oil Co.*, 466 U.S. 54 (1984), when it found certain employee data relevant to an EEOC investigation.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-17) is reported at 804 F.3d 1051. The opinion and order of the district court (Pet. App. 18-33) is not published in the *Federal Supplement* but is available at 2012 WL 5868959.

JURISDICTION

The judgment of the court of appeals was entered on October 27, 2015. A petition for rehearing was denied on January 22, 2016 (Pet. App. 34). The petition for a writ of certiorari was filed on April 4, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* (Title VII), provides that once the Equal Employment Opportunity Commission (EEOC

or Commission) receives a charge of discrimination, the agency "shall make an investigation thereof." 42 U.S.C. 2000e-5(b). "In connection with any investigation of a charge" of discrimination filed with the EEOC, "the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter" so long as the evidence "is relevant to the charge under investigation." 42 U.S.C. 2000e-8(a). This relevance standard has been "generously construed," and "afford[s] the Commission access to virtually any material that might cast light on the allegations against the employer." *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 68-69 (1984).

When an employer refuses to provide the Commission with information it seeks as part of an investigation, the EEOC may issue an administrative subpoena and request that a court enforce compliance with the subpoena. 42 U.S.C. 2009e-9 (incorporating 29 U.S.C. 161); see *Shell Oil*, 466 U.S. at 63.

2. a. In January 2008, Damiana Ochoa filed a charge with the EEOC alleging that petitioner, a national supply services company, had engaged in sex discrimination based on pregnancy, in violation of Title VII. Pet. App. 2.

Ochoa filed her charge after she was fired by petitioner. Ochoa had taken a maternity leave. When she sought to return to her position in the grocery division of one of petitioner's Arizona subsidiaries, Ochoa was told that she would first be required to pass a physical strength test. Ochoa alleged in her charge that petitioner requires such strength tests of "all employees

returning to work from a medical leave and all new hires, regardless of job position." She stated in her charge that after she was unsuccessful in three attempts to pass the strength test, petitioner fired her. Pet. App. 19-20; see *id.* at 2-3.

The Commission began an investigation of the Arizona subsidiary where Ochoa worked and—after petitioner acknowledged that it employed strength tests for all employees nationwide returning to positions it classified as physically demanding—expanded the investigation to include all of petitioner's grocery-division facilities. Pet. App. 3; see C.A. E.R. 60-61, 100.[1] As part of its investigation, the Commission requested data regarding employees who had been required to take strength tests and petitioner's employment decisions concerning those employees. Petitioner ultimately complied with the Commission's requests for the gender and job class of each employee that petitioner had required to take the strength test; the reasons petitioner had required the tests; and whether the employees had passed or failed the tests. *Ibid.*

Petitioner refused, however, to disclose so-called "pedigree information" regarding the employees described in that data—such as names, addresses, and social security numbers. C.A. E.R. 27-28, 60-67, 70.

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[1] Ochoa also alleged that petitioner's use of a strength test violates the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* C.A. E.R. 46. After the EEOC sought to enforce part of its subpoena seeking information related to disability discrimination, however, the district court concluded that since Ochoa neither claimed to be disabled nor claimed to have brought her charge on behalf of a disabled individual, the EEOC lacked jurisdiction to investigate Ochoa's allegation of disability discrimination. *Id.* at 5-7. The EEOC did not appeal that determination.

Petitioner also declined to provide information about why it had terminated the employees who were dismissed after taking strength tests. Pet. App. 4; C.A. E.R. 82-83.

The Commission issued a subpoena seeking the withheld information. Pet. App. 4. It noted before the district court that the names and social security numbers were part of petitioner's human resources and testing records, so that production of the information did not impose an additional burden on petitioner. C.A. E.R. 133.

b. The district court denied enforcement of the Commission's subpoena in part and granted the request in part. Pet. App. 18-33. As relevant here, the district court declined to enforce the subpoena as to pedigree information, writing that the pedigree information was "not relevant at this stage to a determination of whether the [test] systematically discriminates on the basis of gender." *Id.* at 29. The court reasoned that the Commission could preliminarily establish whether petitioner's use of the strength test discriminated based on statistical data, writing that "[t]he addition of the gender variable" to petitioner's testing data "will enable the E.E.O.C. to determine whether the [strength test used by petitioner] systematically discriminates on the basis of gender." *Ibid.* If statistical analysis indicates "that it does" discriminate, the district court wrote, "[a]t that point, pedigree information may become relevant to an investigation and the [Commission] may find it necessary to seek such information." *Id.* at 29-30.

The district court also did not grant enforcement of the portion of the Commission's subpoena seeking disclosure of the reasons for the terminations of the em-

ployees who were fired after taking strength tests. Pet. App. 32-33. The court did not, however, directly address the parties' arguments concerning the EEOC's request for that information.[2]

c. The court of appeals reversed the district court's decision in part, vacated the decision in part, and remanded for further proceedings. Pet. App. 1-17.

The court of appeals first concluded that the district court had erred in declining to enforce the EEOC's subpoena for pedigree information on the theory that the identity of the individuals whom petitioner required to take strength tests was not relevant to EEOC's investigation of whether petitioner's use of the strength test constituted gender discrimination. The court of appeals noted that "Title VII grants the EEOC broad power, within specified limits, to investigate potential violations of the statute." Pet. App. 6. In considering whether to enforce an EEOC subpoena, the court explained, a reviewing court's authority is limited to determining "(1) whether Congress has granted the authority to investigate; (2) whether procedural requirements have been followed; and (3) whether the evidence is relevant and material to the investigation." *Id.* at 7-8 (quoting *EEOC* v. *Children's Hosp. Med. Ctr.*, 719 F.2d 1426, 1428 (9th Cir. 1983) (en banc), overruled on other grounds as recognized in

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[2] The district court granted enforcement of the subpoena insofar as it required petitioner to disclose the gender of each test taker; the date the test was given; the score the test taker received; the position for which the test was taken; the passing score for the position in question, and whether any adverse employment action was taken within 90 days of an employee's taking the test. Pet. App. 4-5.

Prudential Ins. Co. v. *Lai*, 42 F.3d 1299, 1303 (9th Cir. 1994), cert. denied, 516 U.S. 812 (1995)). If those conditions are met, it wrote, "the court must enforce the subpoena unless the objecting party shows that the subpoena is overbroad or that compliance would be unduly burdensome." *Id.* at 8 (citation omitted). The court stated that it reviews "the district court's resolution of these issues de novo." *Ibid.* In a footnote, the court observed that the reason it applied de novo review was "unclear" and that "[o]ther circuits * * * appear to review issues related to enforcement of administrative subpoenas for abuse of discretion." *Id.* at 8 n.3.

The court of appeals next concluded that the district court had erred in declining to enforce the EEOC's subpoena for pedigree information of test takers on the theory that the information was not relevant to the EEOC's investigation. It observed that in *Shell Oil*, this Court had explained that the standard of relevancy for administrative subpoenas was "not especially constraining," and encompasses "virtually any material that might cast light on the allegations against the employer." Pet. App. 9 (quoting *Shell Oil*, 466 U.S. at 68-69).

Applying that standard, the court of appeals concluded that "pedigree information is relevant to the EEOC's investigation." Pet. App. 10. The court explained that "Ochoa's charge alleges that [petitioner's] use of the strength test discriminates on the basis of sex," and that the EEOC wished to investigate the veracity of that charge by "contact[ing] other [of petitioner's] employees and applicants for employment who have taken the test" in order "to learn more about their experiences." *Ibid.* "Speaking with those

individuals," the court wrote "might cast light on the allegations against McLane—whether positively or negatively." *Ibid.* For example, the court explained, speaking with test takers would shed light on whether the strength tests were part of a pattern or practice of discrimination, because

> the EEOC might learn through such conversations that other female employees have been subjected to adverse employment actions after failing the test when similarly situated male employees have not. Or it might learn the opposite. Either way, the EEOC will be better able to assess whether use of the test has resulted in a "pattern or practice" of disparate treatment.

Ibid.

The court of appeals explained that the contrary conclusions of petitioner and the district court rested on misapprehensions of statutory standards or of Ochoa's charge. The court first rejected petitioner's contention that the pedigree information was irrelevant because Ochoa's charge "alleges a disparate impact claim, not a pattern-or-practice claim." Pet. App. 10 (emphasis omitted). This description, the court explained, was "wrong" because Ochoa's charged alleged sex discrimination through use of the test, but "does not allege discrimination based on any particular legal theory, and it did not need to do so." *Id.* at 10-11 (citing *EEOC* v. *Kronos Inc.*, 620 F.3d 287, 300 (3d Cir. 2010)).

The court of appeals next rejected petitioner's contention that pedigree information concerning employees that petitioner required to take strength tests was not "relevant" to the charge of discrimination because "given all of the other information [petitioner] has

produced, the EEOC cannot show that production of the pedigree information is 'necessary' to complete its investigation." Pet. App. 11. The court observed that "the governing standard is not 'necessity,' it is relevance," and, citing *University of Pennsylvania* v. *EEOC*, 493 U.S. 182, 188 (1990), noted that "[t]he EEOC does not have to show a 'particularized necessity of access, beyond a showing of mere relevance,' to obtain evidence." Pet. App. 11.

The court of appeals then rejected the district court's reasoning regarding relevance as resting on a misunderstanding of the statutory relevance standard. The district court, it noted, "appeared to conclude that the EEOC did not really need pedigree information to make a preliminary determination as to whether the use of the strength test has resulted in systemic discrimination." Pet. App. 12. This was error, the court of appeals explained, because relevance—rather than necessity—was the standard. *Ibid.* Thus, it wrote, "[t]he EEOC's need for evidence—or lack thereof—simply does not factor into the relevance discrimination." *Ibid.*

Finally, the court of appeals rejected petitioner's contention that pedigree information was irrelevant because "Ochoa's charge alleges only a 'neutrally applied' strength test, which by definition cannot give rise to disparate treatment, systemic or otherwise." Pet. App. 13. That contention, the court explained, "misconstrues the charge." *Ibid.* The court observed that Ochoa had alleged that petitioner required all employees returning from medical leave "to take the strength test before they can return to work," but that—far from alleging that "the test is neutrally *applied*"—Ochoa had alleged "that the test was dis-

criminatorily applied as to her." *Ibid.* The court added that "[t]he very purpose of the EEOC's investigation is to determine *whether* the test is being neutrally applied; the EEOC does not have to take [petitioner's] word for it on that score." *Ibid.* (citing *Merritt* v. *Old Dominion Freight Line, Inc.*, 601 F.3d 289, 296-299 (4th Cir. 2010)).

The court of appeals also observed that petitioner had not contended that production of social security numbers would impose any "undue burden." Pet. App. 14. The court added that while petitioner had suggested in a footnote that it was "attempting to protect its employees' privacy interests by withholding their social security numbers," this was not a valid ground for withholding the information from the EEOC under the statute. *Ibid.* (citing 42 U.S.C. 2000e-8(e); *University of Pa.*, 493 U.S. at 192-193).

As to the second class of information in dispute on appeal—petitioner's reasons for terminating individuals who had taken strength tests—the court of appeals "vacate[d] the district court's order denying enforcement" of the relevant portion of the subpoena, and remanded the case for further proceedings. Pet. App. 15. The court noted that "[t]he district court provided no explanation for refusing to require production of this information." *Id.* at 14-15. It noted that there was no dispute that the reasons for termination were relevant to the EEOC's investigation, and that the parties had disagreed only over whether "production of this information would pose an undue burden." *Id.* at 15. Rather than address that question in the first instance, the court remanded the case "so that the district court can rule on whether requiring [petition-

er] to produce that information would in fact be unduly burdensome." *Id.* at 15-16.[3]

ARGUMENT

Petitioner contends (Pet. 15-20) that the court of appeals erred in applying de novo review to the district court's decision declining to enforce an administrative subpoena. It further contends (Pet. 21-27) that the court of appeals was incorrect in finding certain pedigree information relevant to the EEOC investigation in this case. These arguments lack merit. Because the court of appeals found legal error in the district court's decision, its de novo review was consistent with decisions of this Court and with the approaches of other courts in subpoena enforcement actions. Moreover, petitioner's failure to preserve any challenge to the standard of review before the panel counsels against granting a writ of certiorari to review that challenge. The court of appeals' fact-specific determination of relevance was also correct and does not conflict with the decision of any other court of appeals. Further review is unwarranted.

1. a. The court of appeals correctly applied a de novo standard in rejecting the district court's grounds for declining to enforce EEOC's administrative subpoena for pedigree information concerning certain of petitioner's employees. Courts of appeals consistently apply de novo review to district courts' resolution of

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[3] In a concurrence, Judge Milan D. Smith emphasized the importance of safeguarding sensitive identity data, such as social security numbers, and stated that while "we, as a court, are not in a position in this case to weigh the concerns present in any particular data gathering and storage protocol, the EEOC would be well advised to consider these issues in the collection of data in this case." Pet. App. 16-17.

legal questions that are part of subpoena enforcement decisions—despite some variation in the standards of review applied to other aspects of those courts' enforcement decisions. The Ninth Circuit reviews district courts' orders concerning enforcement of EEOC administrative subpoenas de novo. Pet. App. 8 (citing *EEOC* v. *Federal Express Corp.*, 558 F.3d 842, 846 (9th Cir.), cert. denied, 558 U.S. 1011 (2009)). Most other courts of appeals, in contrast, review decisions concerning enforcement of administrative subpoenas for abuse of discretion. *EEOC* v. *Kronos, Inc.*, 620 F.3d 287, 295-296 (3d Cir. 2010) (enforcement decisions generally); *EEOC* v. *Randstad*, 685 F.3d 433, 442 (4th Cir. 2012) (same); *United States* v. *Chevron U.S.A., Inc.*, 186 F.3d 644, 647 (5th Cir. 1999) (same); *EEOC* v. *Quad/Graphics, Inc.*, 63 F.3d 642, 644-645 & n.1 (7th Cir. 1995) (same); *United States EEOC* v. *Technocrest Sys., Inc.*, 448 F.3d 1035, 1038 (8th Cir. 2006) (enforcement decisions and relevancy determinations); *FTC* v. *Boehringer Ingelheim Pharm., Inc.*, 778 F.3d 142, 148 (D.C. Cir. 2015) (enforcement decisions generally), cert. denied, 136 S. Ct. 925 (2016). The Second Circuit has stated that subpoena enforcement decisions are reviewed for abuse of discretion, *Ratliff* v. *Davis Polk & Wardwell*, 354 F.3d 165, 168 (2003), but has treated relevancy determinations as decisions of fact reviewable for clear error, *EEOC* v. *United Parcel Serv., Inc.*, 587 F.3d 136, 137 (2009) (per curiam). Finally, the Eleventh Circuit has characterized "[t]he 'relevance' of documents in an administrative proceeding" as "a mixed question of law and fact." *EEOC* v. *Royal Caribbean Cruises, Ltd.*, 771 F.3d 757, 760 (2014) (per curiam).

Under any of these frameworks, a district court's interpretation of the legal standard of relevancy is subject to de novo review. A district court "by definition abuses its discretion when it makes an error of law." *Koon* v. *United States*, 518 U.S. 81, 100 (1996) (citing *Cooter & Gell* v. *Hartmarx Corp.*, 496 U.S. 384, 405 (1990)); see *Highmark Inc.* v. *Allcare Health Mgmt. Sys., Inc.*, 134 S. Ct. 1744, 1748 n.2 (2014) (same). Accordingly, courts of appeals applying an abuse-of-discretion standard in subpoena enforcement cases have stated that de novo review applies when district courts misunderstand the applicable standard. *Boehringer Ingelheim Pharm.*, 778 F.3d at 148 ("A district court necessarily abuses its discretion if it applies the incorrect legal standard, a question that is reviewed de novo.") (emphasis omitted); *Kronos*, 620 F.3d at 295-296 (stating that a district court commits abuse of discretion in a subpoena enforcement action "when 'the district court's decision rests upon * * * an errant conclusion of law'") (citations omitted); *Quad/Graphics*, 63 F.3d at 645 n.1 (explaining that "enforcement decisions hinging upon a district court's legal understanding are reviewed in plenary fashion"); *Randstad*, 685 F.3d at 448 ("The district court's application of an unduly strict standard of relevance amounted to legal error, leading to an abuse of discretion."). Similarly, the Second Circuit has stated that the legal errors in subpoena enforcement proceedings are reviewed de novo, *Ratliff*, 354 F.3d at 168 (citing *Koon*, 518 U.S. at 100; *In re Grand Jury Subpoenas Dated Mar. 19, 2002 & Aug. 19, 2002*, 318 F.3d 379, 383 (2d Cir. 2003)), and found reversible error when a

"district court applied too restrictive a standard of relevance," *United Parcel Serv.*, 587 F.3d at 137.[4]

Under all these frameworks, the court of appeals properly applied de novo review in rejecting the district court's determination that pedigree information was not relevant to the EEOC investigation in this case. The court of appeals understood the district court to have misconstrued the applicable legal test—declining to enforce the EEOC's subpoena on the "invalid" ground that "the EEOC did not really need pedigree information to make a preliminary determination as to whether use of the strength test has resulted in systemic discrimination." Pet. App. 12. The showing of need that the district court appeared to require, the court of appeals explained, "simply does not factor into the relevance determination." *Ibid.* Since the appropriate legal standard for subpoena enforcement is a question of law that is reviewed de novo in any court, the court of appeals' use of de novo review to reject the district court's construction of the

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[4] Moreover, when courts of appeal that utilize a deferential standard of review in subpoena enforcement actions have found that a district court's conclusion in an enforcement proceeding rested on legal error, they have addressed the underlying merits of whether enforcement of the subpoena was warranted without any deference. *E.g.*, *Randstad*, 685 F.3d at 448 (rejecting district court's construction of relevance standard as erroneous and "[a]pplying the correct standard, with deference to the EEOC's assessment of relevance," to "conclude that all of the EEOC's requested materials fall within the broad definition of relevance applicable to EEOC administrative subpoenas"); *Kronos*, 620 F.3d at 299; *United Parcel Serv., Inc.*, 587 F.3d at 139-140; see *EEOC* v. *United Air Lines*, 287 F.3d 643, 654 n.6 (7th Cir. 2002) (conducting review of relevancy where district court had failed to conduct relevancy analysis).

applicable standard was correct under the approach of any circuit.

b. In any event, the question whether a de novo standard of review applies to district courts' subpoena enforcement decisions is not one that currently warrants this Court's review. As petitioner acknowledges, only the Ninth Circuit applies a de novo standard of review to district courts' ultimate enforcement decisions. The decision below, however, raises doubt as to whether the Ninth Circuit would adhere to that standard if asked to reconsider it in an appropriate case. Before the panel both parties expressly agreed that a de novo standard of review applied, Resp. C.A. Br. 21; Gov't C.A. Br. 27 n.6, and the panel applied that standard. However, the panel expressly noted that it was not clear why it reviewed subpoena enforcement decisions de novo, and it observed that its approach differed from that of other courts of appeals. Pet. App. 8 & n.3. While petitioner subsequently asked the court to revisit that standard by filing a petition for rehearing en banc, the petition was not an appropriate vehicle for such reconsideration because under circuit precedent, the court of appeals does not "consider issues that a party raises for the first time in a petition for rehearing." *United States* v. *Mageno*, 786 F.3d 768, 775 (9th Cir. 2015) (quoting *Varney* v. *Secretary of Health & Human Servs.*, 859 F.2d 1396, 1397 (9th Cir. 1988)); see *Boardman* v. *Estelle*, 957 F.2d 1523, 1535 (9th Cir.), cert. denied, 506 U.S. 904 (1992). This Court's intervention to consider a standard that the court of appeals has questioned would be premature before the court of appeals itself has had an appropriate opportunity to reconsider that standard.

c. Petitioner's failure to preserve its standard of review argument before the panel is an independent reason why further review is not warranted in this case. This Court's general rule is that it will not decide an issue raised by a party that was neither presented nor decided below. See, *e.g.*, *United States* v. *Jones*, 132 S. Ct. 945, 954 (2012); *Rent-A-Center W., Inc.* v. *Jackson*, 561 U.S. 63, 75-76 (2010); *United States* v. *Galletti*, 541 U.S. 114, 120 n.2 (2004); *Sprietsma* v. *Mercury Marine*, 537 U.S. 51, 56 n.4 (2002). Litigants can and do preserve arguments for en banc or Supreme Court review in their appellate briefing, notwithstanding contrary circuit precedent on a question at issue. See, *e.g.*, *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U.S. 118, 125 (2007) (noting petitioner had devoted "a few pages" to issue in court of appeals briefing, despite binding contrary circuit precedent). Since this Court is a "court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), petitioner's failure to raise its claims before the panel—and the corresponding lack of development concerning the standard-of-review question in the court below—renders this case a poor vehicle for further consideration.

2. Review is also unwarranted of petitioner's contention (Pet. 21-27) that the court of appeals erred in concluding that the pedigree information sought by the EEOC was relevant to the EEOC's investigation of Ochoa's charge. There was no error in the court's relevancy determination. The court correctly set forth the applicable legal standard of *Shell Oil*. Pet. App. 9 (quoting *EEOC* v. *Shell Oil Co.*, 466 U.S. 54, 68-69 (1984)). It then concluded that "[u]nder this standard, * * * the pedigree information is relevant to the

EEOC's investigation" of Ochoa's charge that petitioner's "use of the strength test discriminates on the basis of sex." *Id.* at 10. The court explained that, "[t]o take but one example," the EEOC "will be better able to assess whether use of the test has resulted in a 'pattern or practice' of disparate treatment" by speaking with "other [of petitioner's] employees and applicants for employment who have taken the test." *Ibid.*

Petitioner does not (and could not) assert any error in the court of appeals' articulation of the applicable legal rule. Instead, petitioner suggests (Pet. 22-23) that the court of appeals misapplied the standard developed in *Shell Oil* because any connection between the pedigree materials sought by the EEOC and the EEOC's investigation of the Ochoa charge is speculative. But petitioner simply fails to address the court of appeals' explanation of why the evidence sought would in fact make the EEOC "better able to assess" Ochoa's charge regarding discriminatory use of strength tests. See Pet. App. 10. In any event, the question whether a court correctly applied a legal rule to particular facts does not ordinarily warrant this Court's review. Sup. Ct. R. 10.

Petitioner asserts (Pet. 24-26) a conflict with several decisions in which other courts of appeals found particular materials were not relevant to the investigations in which they were issued. But those decisions simply applied the same legal standard utilized in this case to different facts. See *Royal Caribbean Cruises*, 771 F.3d at 761 (when employer admitted it terminated employee based on HIV and Kaposi Sarcoma diagnoses but contended that it did so to comply with Bahamian law, rejecting an EEOC subpoena for "company-wide data regarding employees and appli-

cants around the world with any medical condition, including conditions not specifically covered by the [relevant Bahamian] medical standards or similar to" those of the employee); *EEOC* v. *Burlington N. Santa Fe R.R.*, 669 F.3d 1154, 1157-1159 (10th Cir. 2012) (rejecting subpoena seeking to determine how a railroad company "keeps track of every current and former employee, across the country, since 2006" based on individual allegations of disability discrimination by two applicants who applied for the same type of job in the same State); *EEOC* v. *United Air Lines*, 287 F.3d 643, 654-655 (7th Cir. 2002) (rejecting subpoena for information regarding employees worldwide who had taken medical leave or had been laid off and benefits they received, in investigation of flight attendant's charge that employer unlawfully failed to make contributions to French social security system on behalf of Americans employed or living in France). There is no conflict between the enforcement decision here and the decisions cited by petitioners, all of which address differing requests in the context of distinct EEOC investigations.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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